

# VERMONT TRANSPORTATION BOARD MEETING SEPTEMBER 26, 2018

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## **Board Members Present:**

David Coen, term expires 2/28/21  
T. Faith Terry, term expires 2/28/19  
Tim Hayward, term expires 2/28/2020  
Wendy Harrison, term expires 2/28/19  
Vanessa Kittell, term expires 2/28/19  
Richard Bailey, term expires 2/28/21

## **Board Members Absent:**

None

## **Others Present:**

John Zicconi, Board Executive Secretary  
Toni Clithero, Assistant Attorney General  
Jenny Ronis, Assistant Attorney General  
Florence Smith, VTrans Legal Assistant  
Robert Faley, VTrans Maintenance District Administrator (by phone)  
Daniel Shepard, VTrans Maintenance District General Manager (by phone)  
Martin McLea, Claimant (by phone)  
Tyler Molleur, Claimant (by phone)  
Michele Doucette, Claimant (by phone)  
Richard Wobby, Associated General Contractors  
Dan Landry, VTrans Engineer  
Larry DuPont, Applicant (by phone)

## **Call to Order:**

Chair David Coen called the Wednesday, September 26, 2018 meeting to order at 9:30 a.m., which was held in the Catamount Conference Room at 1 National Life Drive, Montpelier, VT.

## **1. NEW BUSINESS**

### ***1.1 Review/Approve Minutes of the July 26, 2018 Meeting***

**On a motion by Mr. Hayward seconded by Ms. Harrison, the Board unanimously voted to approve the minutes of the July 26, 2018 Board meeting with corrections.**

### ***1.2 TB-480 Green Mountain Byway Expansion***

Mr. Bailey, who was appointed hearing officer in this case, told the Board he attended a public hearing on September 10, 2018 along with Mr. Zicconi. At the public hearing, which was held pursuant to 19 V.S.A. Section 2501 in Hyde Park and hosted by the Hyde Park Select Board, all public comments about the proposed byway expansion were positive. Attendees, Mr. Bailey said, expressed excitement about using the expanded byway as a marketing tool to help the local economy. He said the proposal met all the criteria of the old Vermont Byway Commission, including having the byway's corridor

management plan updated to include the proposed changes. The proposal has the support of all local communities, including Waterbury, Stowe, Morristown, Morrisville, Hyde Park, Johnson, Cambridge and Jeffersonville, as well as support from both the Central Vermont and Lamoille County Regional Planning Commissions. As hearing officer, Mr. Bailey said he supports byway expansion as he believes it would benefit the region.

**On a motion by Mr. Bailey seconded by Ms. Kittell, the Board unanimously voted to approve the expansion of the Green Mountain Byway as proposed in the 2018 updated of the Green Mountain Byway Corridor Plan.**

### ***1.3 TB-478 DuPont Airstrip Application***

Mr. Coen informed the Board that prior to the meeting that he made an administrative ruling that Mr. DuPont, aside from notifying certain immediate neighbors in North Hero by certified or registered mail about his application for an airstrip, also had to notify by mail some neighbors across the water channel from his property that reside in the Town of Alburgh. Mr. Coen said he made this determination because the water channel was only between a quarter and half mile across, and that sound from aircraft could carry that distance across the water. Mr. DuPont objected to this ruling, Mr. Coen said, and as a result he told the applicant that he would bring the issue to the entire Board for a definitive ruling.

Mr. DuPont told the Board that his primary flight pattern would have planes take off to the south and turn east away from Alburgh and not west towards the properties across the water channel. Any takeoffs to the north will also turn east, Mr. DuPont said. Primary landing patterns also will not be made over the Alburgh properties. As a result, Mr. DuPont said he does not believe there will be a significant impact from his airstrip to these Alburgh property owners, and therefore he should not have to incur the expense to provide them formal notice by mail.

Mr. Zicconi told the Board that regardless of its decision he would work with the Town of Alburgh to find ways to publicly notice the upcoming application hearing, which the Board decided would be held on October 31.

The Board agreed with Mr. DuPont that Alburgh residents were far enough outside the proposed flight pattern that notification by mail was not warranted. Mr. DuPont, however, agreed to notify by mail all neighbors in North Hero to the south of his property as far south as Blockhouse Point and as far north as the local gravel pit. The Board then deemed his application complete and set a site visit and hearing for 10:30 a.m. on October 31 at a place in North Hero to be determined by Mr. Zicconi.

### ***1.4 TB-481 West Haven/Whitehall Bridge Wage Rates***

Ms. Clithero told the Board that VTrans requests pursuant to 19 V.S.A. Section 18 that the Board fix minimum wage rates for various classes of labor for this bridge project to the Davis-Bacon Act minimum rates associated with Washington County, NY. She said VTrans requests this because half the bridge is located in New York while the other half is located in Rutland County, Vermont. She said the

New York Davis-Bacon rates for all classes of labor are higher than those in Vermont, so the Agency seeks to be able to demand that contractors pay all laborers the higher wage no matter where or when they work on the project.

Mr. Wobby asked if the project contained a Project Labor Agreement (PLA) or if contractors would require that workers be union members as a requirement for employment. Ms. Clithero answered no. Mr. Landry told the Board that VTrans was asking the Board to set the higher labor rates, which are spelled out in an attachment to the Agency's application, today as waiting would delay advertising of the project, construction of which both Vermont and New York would like to begin first thing in 2019. Mr. Coen agreed to sign the order that was drafted prior to the meeting and presented to the Board.

**On a motion by Ms. Terry seconded by Ms. Harrison, the Board unanimously voted to approve the minimum Davis-Bacon labor rates listed in the attachment of VTrans' Application for Bridge No. 10 on Town Highway No. 3 in West Haven, VT and CR10 in Whitehall, NY, over the Poultney River.**

***1.5 TB-471 McLea Small Claim Hearing***

Mr. McLea testified that on February 1, 2018 he struck a pothole along a section of Route 100B in Moretown. He said that he was not familiar with this section of roadway as he does not often travel in this area. He said that he does not know how long the pothole existed before he hit it at about 8 p.m., but he believes that due to its size and the damage that it caused to his tire that it must have existed for a considerable period of time. Mr. McLea presented no witnesses or affidavits regarding the length of time that the pothole had existed.

Mr. Shepard said that during the winter of 2017-18 that sections of Route 100B in Moretown contained potholes from time to time, but he said that his office received no complaints that any of the potholes created a danger until February 2, 2018 when Mr. McLea called to report the pothole that he hit. Mr. Shepard said that the pothole Mr. McLea hit was repaired on February 2, 2018 a short time after Mr. McLea reported the Incident. Mr. Shepard said that roadcrews also patched potholes along Route 100B in the area of Mr. McLea's accident several days prior to February 1, 2018. He also said that if weather conditions involve snow, rain and/or freeze/thaw cycles that potholes can appear within a couple of hours without warning or VTrans's knowledge.

Ms. Ronis said that the Agency is immune from tort liability with respect to this claim due to sovereign immunity.

***1.6 TB-467 Doucette Small Claim Hearing***

Dr. Doucette testified that on February 22, 2018 she struck a pothole that had been in existence along Route 100 in Wilmington for a considerable period of time. To support this claim, Dr. Doucette introduced an affidavit from Julie Lineberger who was in the vehicle at the time of the accident, as well

as an affidavit from Lauren Harkawik, a local journalist who wrote newspaper stories published on both February 8, 2018 and February 22 detailing the deteriorating condition of Route 100 in the area of the pothole and the local public concern the deterioration had created. Information from a February 8 newspaper story was included in the affidavit and details a Town of Dover Select Board meeting where selectmen discussed writing letters to state officials to complain about the dangerous condition of Route 100 and the numerous “flat tires” it has caused.

Ms. Harkawik’s affidavit also states that on February 19, 2018 that her personal vehicle sustained two flat tires while navigating the same stretch of Route 100 where Dr. Doucette’s vehicle had its accident. Dr. Doucette introduced copies of a letter dated February 20, 2018 that the Dover Select Board sent to Governor Phil Scott, Commerce Secretary Michael Schirring and VTrans Secretary Joe Flynn complaining about the deteriorating condition of Route 100 in this area and claiming it left motorists at risk.

Dr. Doucette also introduced a series of VTrans work orders that detailed pothole repair in the area stretching from December 1, 2017 to February 23, 2018 and argued that the Agency of Transportation has a duty to actively inspect, maintain and sign the roadway if a danger exists, and not to rely just on phone calls from citizens to alert them that a roadway hazard exists or wait until vehicles have incurred damage in the area before undertaking repairs. She argues that the work orders show that VTrans was aware of the danger this section of roadway presented for more than a month prior to her accident and that the Agency failed to take proper corrective action, post adequate warning signs, or use other methods to slow or warn motorists of a dangerous condition.

Mr. Faley said that the months of January and February is prime pothole season in Vermont, and that such hazards can appear upon state roadways without the Agency’s immediate knowledge. Further, Mr. Faley said that this section of Route 100 was a known problem area and that crews throughout the winter continually attempted repairs that often would not last longer than a day if weather conditions involved snow, rain and/or freeze/thaw cycles. He also said that dating back to January 25, 2018 that his office received multiple complaints regarding potholes along this stretch of Route 100.

Mr. Faley said that between mid-January and mid-February work crews spent as many as 20 days patching potholes in this area of Route 100 in both the towns of Dover and Wilmington. Patching took place along Route 100 in Wilmington on January 26, January 28, January 31, February 11, February 13, February 14, February 15, February 16, and February 20.

Mr. Faley said that during this timeframe the entirety of Route 100 in this area was “failing and falling apart,” and that work crews were patching the roadway “as best they could at the time knowing that the repairs were only temporary.” Mr. Faley said that from February 28 to March 1, a time period just after Dr. Doucette’s accident and following the Town of Dover’s written complaint to the Governor, that he recruited work crews from a nearby highway maintenance district in order to provide additional manpower to patch potholes in this section of roadway.

Mr. Faley said that at an unknown date, VTrans placed two signs along Route 100 in this area (one in each direction) that read “rough road ahead.” He acknowledged, however, that the distance between the signs was lengthy – likely at least five miles apart – and said that “if you see a sign by the time you travel a mile or so it’s typically forgotten. We would have had to have signs along that entire stretch” for people to continuously be on alert. VTrans did not lower the speed limit through the area.

Ms. Ronis argued that the Agency is immune from tort liability with respect to this claim due to sovereign immunity.

### ***1.7 TB 470 Molleur Small Claim Hearing***

Mr. Molleur testified that on January 13, 2018 he struck a pothole along a badly deteriorating section of Route 7 in Milton that contained no warning signs regarding the roadway’s condition. To support this claim, Mr. Molleur introduced an affidavit from Diane Mears, an employee of Vermont Medical Center who travels this stretch of Route 7. The affidavit states that in the week leading up to Mr. Molleur’s accident, the roadway was uneven during winter driving conditions and that no warning signs were present indicating the roadway was hazardous.

Mr. Molleur said that VTrans road maintenance crews worked to repair this section of roadway during the week leading up to his accident, a claim that is supported by a letter provided by VTrans Maintenance District 5 General Manager Daniel Shepard. Mr. Molleur said that winter weather conditions existed during the date of his accident, which is also supported by Mr. Shepard’s letter, and that the weather conditions undermined the recent roadway repairs leaving the roadway stretch in an uneven state littered with potholes, which is also supported by Mr. Shepard’s letter.

Mr. Molleur argues that VTrans was aware of the deteriorating road conditions in this area and therefore knew prior to him hitting the pothole that winter weather conditions would undermine recent repairs leaving the roadway in a hazardous condition. As a result, VTrans should have erected warning signs alerting drivers to use caution while driving through the area.

Ms. Ronis said that VTrans would rest on the information provided in Mr. Shepard’s letter, which states that this section of Route 7 was a known problem area and that crews continually attempted repairs that often would not last longer than a day if weather conditions involved snow, rain and/or freeze/thaw cycles. The letter also acknowledged that due to winter weather conditions, a dangerous condition existed between January 13, 2018 and January 15, which includes the time of Mr. Molleur’s accident on January 13, 2018. VTrans acknowledged that despite this knowledge, the Agency did not erect warning signs, lower the speed limit or take any other measure to warn motorists approaching this area that pavement conditions could be dangerous and that they should slow their speed.

Ms. Ronis also argued that the Agency is immune from tort liability with respect to this claim due to sovereign immunity.

***1.8 TB-469 Graff Small Claim – Request to Dismiss***

Mr. Zicconi told the Board that on September 10, 2018 he received an email from Michael Graff requesting that the Board dismiss his small claim.

**The Board on a motion by Mr. Bailey, seconded by Ms. Terry and approved unanimously voted to dismiss TB-469 Small Claim of Michael Graff without prejudice.**

***1.9 Executive Secretary's Report***

Mr. Zicconi requested that the Board enter executive session to discuss a personnel issue.

**At 12:20 p.m. the Board on a motion by Mr. Hayward, seconded by Ms. Harrison and approved unanimously entered into executive session, pursuant to Title 1 § 313, to discuss a personnel issue.**

Mr. Zicconi was invited to join the executive session.

**The Board exited executive session at 12:30 p.m.**

**2. OLD BUSINESS**

***2.1 Public Forums – Discussion***

Ms. Terry said the Board should discuss if the process it has been following for its public forums is the best one to provide information to the Legislature and to support Vermont communities. Mr. Coen said the Board is stymied into the future in terms of holding public forums so long as Mr. Zicconi, or whomever succeeds Mr. Zicconi, is tied up administering the Lemon Law. Mr. Zicconi agreed and said so long as his job is combined with that of the Lemon Law Administrator then he would not have time to host a series of forums within a short period of time, nor would he have the time it takes to market, research, write and design a report as he has done in the past.

Mr. Zicconi said the Board could sporadically hold forums in the future, which would be a way to not overload the Executive Secretary's schedule at any given time. But that it would be impossible to hold the traditional series of six or eight forums within a six-week timeframe.

Ms. Terry asked about taking a completely different tact – deliberating on specific topics like helipads or pothole repair – and have the Board make recommendations to the Legislature based on its own work. She said she feels an obligation to the state's communities to make helpful recommendations to the Legislature.

Ms. Harrison said it would be helpful to consider how the Legislature gets information about transportation. She said the Regional Planning Commissions have Transportation Advisory Committee's,

but they seem to have little influence with VTrans. She said lots of people – health care advocates, elderly advocates, etc. – care about transportation, but they seldom get directly involved because it is not their number-one priority. As a result, she said it would be helpful to find a way to allow citizens to get their concerns in front of the Legislature.

Mr. Hayward said it may be helpful to discuss the issue with VTrans and the Legislature on how they prioritize and how they hear from the public.

Mr. Coen asked what if the Board held more of its regular meetings in various locations around the state and as part of those meetings held a public forum dedicated to a particular topic. That topic could be guided by where in the state the Board was, and whatever issues seem to be important in that part of the state. He said this did not have to happen every month, but maybe 3 or 4 times a year. Mr. Zicconi asked what the Board would want as a deliverable following such a hearing, and what kind of work – presentation, research, etc. – would be needed if this was done? Mr. Coen said such forums could be simple and involve primarily listening. Afterwards, the Board could write a letter or potentially testify before the Transportation Committees about what it heard.

Ms. Terry asked how this type of a forum would differ from any usual meeting, like a Legislative breakfast, that lawmakers traditionally hold with their constituents? Mr. Coen said the Board's meetings would only be about transportation. Ms. Terry wondered about the time and work needed to research, plan and promote such a public forum, and if the Executive Secretary so long as he also had to administer the Lemon Law had time to do all that. Mr. Zicconi said if the Board were to schedule a forum like this for early January, but the planning began months ahead of time there may be enough time to work it into his schedule so long as there was no need for a significant presentation to be developed. Mr. Coen said this kind of format would be best done to take comment on a well-known problem such as truck traffic through Vergennes. The other question is what the Board would do with the information it gathered after the forum? Mr. Zicconi said writing reports take time, and depending on the background information needed can take significant time. Mr. Coen said just testifying before the Legislature about what the Board heard, on the other hand, does not take a similar amount of time.

Mr. Zicconi said in the past the Board has tried to find a global issue that was important to many regions around the state and gather information about it and how that issue affects the state as a whole. If the Board wanted to change its approach and focus instead on local or regional issues, and have targeted local discussions, that would take less time. Ms. Kittell said the Board could try such an approach, sort of conduct a pilot, and see how it works.

Ms. Harrison suggested that the Board this winter ask the Legislature what is helpful to it. Mr. Hayward agreed. Mr. Coen asked if the Board should write the Transportation Committees a letter asking what would be helpful? Mr. Zicconi suggest that he could speak with the two committee chairs and ask to have the Board placed on their committee's agenda for the chair to visit in January. Mr. Coen said he's happy to do that. He said a half hour of time would be plenty. After meeting with the committees, Mr. Coen said he would return to the Board to provide an update as to what he learned, and the Board could have further discussion from there. The Board agreed.

## **2.2 Board Rules – Discussion**

Mr. Zicconi said last time the Board discussed which of its rules were either outdated or no longer needed that Ms. Harrison had raised concern about repealing the Public Transit Rule while VTrans requested repeal because most, if not all, of the procedure contained in the rule is now included in official Agency policy, federal regulations or some other means. Ms. Harrison said her concern is not over. Since the Board's last meeting, Ms. Harrison said she spoke with VTrans Public Transit Coordinator Barbara Donovan and that even after that conversation that she still has concerns regarding local municipal influence over public transit agencies that receive public money. As a result, Ms. Harrison wanted more time to discuss the issue with additional people as she would like to preserve the possibility that local communities could have such influence.

Mr. Zicconi also reminded the Board that Board Attorney Ron Shems is still working to take comment on his draft changes to the Board's general rules. Mr. Shems was not seeking a Board discussion at this time, just a reminder to the Board that this process is still ongoing. Mr. Coen mentioned that the Board had received a communication about the Board's rules from Richard Wobby, the new executive director of Vermont's Association of General Contractors. Mr. Zicconi said he has not yet heard back from Mr. Wobby since he asked for time to comment. Mr. Coen asked Mr. Zicconi to try to close that loop.

**2.3 TB-464 Kendall Station Road Southern RR Crossing**

**2.4 TB-457 Kendall Station Road Northern Crossing Closure Plan**

**2.5 TB-466 Cote Small Claim**

**At 1:25 p.m. the Board on a motion by Ms. Kittell, seconded by Mr. Hayward and approved unanimously entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-466, Small Claim of Doug Cote, TB-457 Kendall Station Northern Crossing, TB-464 Kendall Station Road Southern RR Crossing, TB-470 Small Claim of Tyler Molleur, TB-467 Small Claim of Michele Doucette, and TB-471 Small Claim of Martin McLea.**

Mr. Zicconi was invited to join the deliberative session.

**The Board exited deliberative session at 2:30 p.m.**

## **3. OTHER BUSINESS**

### **3.1 Round Table**

The Board chose to schedule its November/December meeting on November 29.



**4. ADJOURN**

**On a motion by Mr. Bailey seconded by Mr. Hayward, the Board unanimously voted to adjourn at 2:35 p.m.**

Respectfully submitted,

John Zicconi  
Executive Secretary